

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of

)
)
)
)
)

ROSEMEAD ELEMENTARY SCHOOL

DISTRICT, ROSEMEAD, CALIFORNIA

)

File No. SLD 143604

Schools and Libraries Universal Service
Support Mechanism

)

)

)

CC Docket No. 02-6

CC Docket No. 96-45

**REQUEST FOR REVIEW OF THE DECISION AND WAIVER OF THE
DECISION OF THE UNIVERSAL SERVICE ADMINISTRATOR BY
ROSEMEAD ELEMENTARY SCHOOL DISTRICT, ROSEMEAD, CA**

I. INTRODUCTION

1. The Rosemead Elementary School District, (the “District”) appeals the decision of the Universal Service Administrative Company (“USAC”) concerning the schools and libraries universal service support mechanism (also known as the E-rate program) reduction of ineligible costs, to wit, the reduction was an error in that the recorded dollar amount was \$80,000.00 too high due to a typographical error. The District believes that special circumstances exist to justify a waiver of the Commission’s rules, and, accordingly files this Request for Review and Waiver of the administrative rules/policies applied to this case.
2. The District requests that the Commission review the process by which the reduction was derived during review of the application and offer an opinion as to whether the circumstances constitute a ministerial error on the part of the beneficiary as well as the reviewer.

II. BACKGROUND

1. The District filed multiple applications for discount requests on various services and projects during Funding Year 2007 – 2008. During Program Integrity Assurance Review (PIA), it was noted that application number 574972 (FRN 1589409) contained items that were to be installed at an ineligible site (District Warehouse). The reviewer requested that the District, in conjunction with the awarded service provider calculate the cost of the two switches in question including all associated charges (labor/installation, tax, etc.). This exercise was completed and a total dollar amount was submitted. The ineligible cost of one switch (including labor/installation, tax, etc) was \$4,543.25 (each) as indicated on the response. Unfortunately, when the ‘grand total’ was recorded, it read \$44,543.25 (each). This discrepancy equated to an erroneous reduction of

- \$89,086.50 when the correct amount should have been only \$9,086.50. There were multiple reductions for various reasons on this application and the error was not caught by either the reviewer or the District at the time of occurrence. (please see *attachment A* - email strand that demonstrates the exchange of information).
2. The District was notified that this error had occurred when the service provider began to invoice for the work that had been completed in March of 2008. The invoices were reviewed upon submission and the discrepancy was uncovered when there were not enough dollars left to pay the invoices that had been submitted.

III. DECISIONS BY THE COMMISSION ON APPEALS

1. As noted in the decision published in the *Bishop Perry Middle School, New Orleans, LA* appeal, SLD # 487170, the “Commission may waive any provision of its rules on its own motion and for good cause shown.” (47 C.F.R. §1.3.) Additionally, a “rule may be waived where the particular facts make strict compliance inconsistent with the public interest.” *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

DISCUSSION

1. The District believes that under the circumstances described above, and pursuant to the applicable rulings by the FCC, there is reason for the Commission to waive the deadline associated with their ability to correct recognized errors upon receipt of a Funding Commitment Decision Letter (FCDL). Due to the large amount of information requested, reviewed and replied to during the PIA process, it is understandable that neither the District or the PIA reviewer caught that the simple math did not add up when the costs associated with the two switches in question were indicated.

Further, the District believes that denial of this request does not “further the purposes of the statutory goal mandated by Congress of preserving and advancing universal service among schools and libraries.”

2. District relies on *Bishop Perry Middle School, New Orleans, LA*, the

Commission stated as follows:

As we recently noted, many E-rate program beneficiaries, particularly small entities, contend that the application process is complicated, resulting in a significant number of applications for E-rate support being denied for ministerial, clerical or procedural errors. We find that the actions we take here to provide relief from these types of errors in the application process will promote the statutory requirements of section 254(h) of the Communications Act of 1934, as amended (the Act), by helping to ensure that eligible schools and libraries actually obtain access to discounted telecommunications and information services. In particular, we believe that by directing USAC to modify certain application processing procedures and granting a limited waiver of our application filing rules, we will provide for a more effective application processing system that will ensure eligible schools and libraries will be able to realize the intended benefits of the E-rate program as we consider additional steps to reform and improve the E-rate program. The Commission may waive any provision of its rules on its own motion and for good cause shown. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.

VI. CONCLUSION

For the reasons discussed herein, the District respectfully requests the Commission grant the Request for Review and Waiver and Remand the case to USAC for further consideration pursuant to the E-rate rules.

All further contact should be directed to Kimberly Friends at kfriends@csmgconsulting.com.

Attachments: *Attachment A(Four (4) pages)*

Rosemead Elementary
143604
Attachment A

Dear Sal,

On behalf of the Rosemead School District, we accept the following cost allocations:

See pages 3 and 4

1. Based on documentation that you have provided, we have determined that application 574972 FRN 1589409 includes ineligible items. According to program rules, USAC is unable to fund ineligible products or services. The charges associated with ineligible items must be identified and removed. Listed below are the ineligible items and their associated costs:

a) 45% of Cisco 3825 voice bundle routers - \$21,561.13

In response to your voicemail, the reason I asked for the functionality of the Safari Montage Server is because your response only provided the functionality for the Safari Pathways Server.

Due to new guidance from the FCC, I now have to confirm with you the following changes that were made to your application:

1. Based on documentation that you have provided, we have determined that application 574972 FRN 1589409 includes ineligible items. According to program rules, USAC is unable to fund ineligible products or services. The charges associated with ineligible items must be identified and removed. Listed below are the ineligible items and their associated costs:

a) 45% of Cisco 3825 voice bundle routers - \$21,561.13

2. Based on documentation that you have provided, we have determined that application 574972 FRN 1589571 includes ineligible items. According to program rules, USAC is unable to fund ineligible products or services. The charges associated with ineligible items must be identified and removed. Listed below are the ineligible items and their associated costs:

a) warranties beyond the initial year - \$169

4. Based on documentation that you have provided, we have determined that application 579696 FRN 1607104 includes ineligible items. According to program rules, USAC is unable to fund ineligible products or services. The charges associated with ineligible items must be identified and removed. Listed below are the ineligible items and their associated costs:

a) 25% of two CE 507 - \$18.33

b) 25% of technical support for two CE 507 - \$6.25

5. Based on documentation that you have provided, we have determined that application 579696 FRN 1607131 includes ineligible items. According to program rules, USAC is unable to fund ineligible products or services. The charges associated with ineligible items must be identified and removed. Listed below are the ineligible items and their associated costs:

a) 25% of two CE 507 - \$18.33

b) 25% of technical support for two CE 507 - \$6.25

However in the case of the following item, we would like to propose the following clarification to the decision to make these items ineligible:

3. For application 574972 FRN 1589660, the documentation provided in the Item 21 Attachments indicates that the following ineligible items:

- 1) Creation Station
- 2) HEH-IR 4U ADRSBI source controller
- 3) PK3000 Hand-held programmer
- 4) Montage WAN Manager
- 5) Any shipping or services charges associated with the

components above.

Equipment and software that is used in the programming, distribution and selection of video content **is eligible** if used in the **transport of information** to the individual classroom. The WAN Manager software meets this eligibility definition cited on page 13, of the SLD's Eligibility list, dated October 19th, 2006.

Per the proposed technology solution for Rosemead; the WAN Manager operating software and equipment is used on both the client and the head end piece. Without either, the client and/or the head end would not be able to transport information all the way to the individual classroom.

The WAN Manager is the operating software that is used in the programming, distribution and selection of video content for the video on demand system(s) both at the head end and at the school level. If this software were not installed on both the head end and the client, the remaining centralized video components (that are part of the solution) would not be able to transport information all the way to the classroom based on the proposed networked solution.

Per your previous communication on 5/07/07, it was concluded that the Montage WAN manager was ineligible because it is considered a management software on an application server. The Montage WAN manager software doesn't function as network management software because of the following:

- 1) the WAN Manager software is server-based.
- 2) the eligible portion of the server "serves" as a conduit for information rather than as a source of content
- 3) the software is not controlling, monitoring and managing a communications-based network

Please feel free to contact me if you have any further questions.

Thanks,
Lila Bronson

Sal Cooper
Schools & Library Division
Phone: 973-581-5373
Fax: 973-599-6513
Email: scooper@sl.universalservice.org

-----Original Message-----

From: Cooper, Sal
Sent: Tuesday, April 24, 2007 3:56 PM
To: 'Lila Bronson'
Subject: RE: E-rate applications 569933, 574972, 579696

I have reviewed your response and have the following questions:

1. Where is the District Warehouse labeled on the network diagrams you sent in?
2. Regarding application 574972 FRN 1589660:
 - a) What is the functionality of the Safari Montage servers?
 - b) Please cost allocate out the following components and any associated charges for shipping and installation:
 - 1) Creation Station
 - 2) HEH-IR 4U ADRSBI source controller
 - 3) PK3000 Hand-held programmer
 - 4) Montage WAN Manager

Sal Cooper
Schools & Library Division
Phone: 973-581-5373
Fax: 973-599-6513
Email: scooper@sl.universalservice.org

-----Original Message-----

From: Lila Bronson [mailto:lilawb@earthlink.net]
Sent: Wednesday, April 11, 2007 7:18 PM
To: Cooper, Sal
Subject: RE: E-rate applications 569933, 574972, 579696

Dear Sal,
Thanks for the extra time. I will get it to you as soon as possible.

Dear Sal,
Here is the information that you requested:

Please provide which FRN numbers from application 579696 to remove the below Warehouse charges and how much should be removed from application 574972 and from which FRNs?

Regarding Application #574972-

FRN# 1589439- Remove 1 ATA box- @ \$150 + 12.37 tax = \$162.38

FRN# 1589660- does not involve the warehouse

FRN# 1589409- deduct the cost of 2 switches and 2 transceivers @44543 each = 89086 see below
The replacement cost of the 2 DF switches is WS-C3560-48PS-S

Catalyst 3560 48 10/100 PoE + 4 SFP Standard Image- 6,495.00 with a 40% discount = **\$3,897**

+ shipping -**\$312** =**\$4,209**

*belonged
to
warehouse*

Also GBIC- GLC-SX-MM and GE SFP, LC connector SX transceiver

1 @ 500.00 w/40% discount = \$300 no tax or shipping

The parts listed above total \$4197 plus <mailto:tax%20@8.25>tax @8.25= \$346.25 for total material of 44543.25 Material with \$312 labor included

FRN #1589571- does not involve the warehouse

FRN # 1589522- does not involve the warehouse

For application 579696- Maintenance-

FRN # 1607104- Please deduct 165 per switch x 2 = \$330

FRN # 1607131- Please deduct \$372 x 2 for both Smartnet warranties- \$744

For the Maintenance on the two switches the price for smartnet 8 x 5 nbd version on WS-C3524 Switch (21)- CON-SNT-WS-C3524 LIST price \$372.00

Thanks,

Lila

4197.00
346.25
4543.25 x 2 switches

NOT:

\$44,543.25

times 2 switches

444